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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,257	02/24/2004	Thomas R. Kruer	1819-3	8892
7590	03/25/2005		EXAMINER	
John S. Egbert Harrison & Egbert 7th Floor 412 Main Street Houston, TX 77002			BARNEY, SETH E	
			ART UNIT	PAPER NUMBER
			3752	
			DATE MAILED: 03/25/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/785,257	KRUER ET AL.
	Examiner	Art Unit
	Seth Bamey	3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 24 February 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-8,10-13,15-18 and 20 is/are rejected.
 7) Claim(s) 9,14 and 19 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 24 February 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/6/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "fluid-filled container" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 6, 7, 10, 12, 13, 16, 17, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,047,995 to Leal-Diaz.

Regarding claim 1, Diaz discloses an irrigation drip device having:

-at least two polymeric material layers sized and shaped to cover an area immediately around at least one plant and selectively bonded together (Fig. 4B) to define a fluid-conveying passageways (3) forming one or more distribution headers (Fig. 4B) and a flow restricting means (3).

-an inlet means (10) for delivery of fluid into the distribution headers throughout the polymeric material layers, the inlet means being in fluid communication with the distribution headers. See Figure 4B.

-an outlet means (9) capable of dispensing and metering fluid into a root zone area covered by at least one layer of said polymeric material layers, said outlet means being in fluid communication with the flow restricting means. See Figure 4B.

-wherein the flow restricting means is in fluid connection with the distribution header and a multi-dimensional array of the outlet means. See Figure 4B.

Regarding claim 6, at least one of the polymeric material layers are capable of being removeably positioned in a container.

Regarding claim 7, at least one of the polymeric material layers is capable of covering an area on a surface of a container.

Regarding claim 10, at least one of the polymeric material layers is capable of having an outer circumference extending beyond the edge of the container depending on the size of the container.

Regarding claim 12, the outlet means comprise a plurality of outlet means distributed over an area covered by at least one of the polymeric material layers. As seen in Figure 4B there are a plurality of outlet means (5).

Regarding claim 13, the outlet means are perforations extending through the polymeric layers. See Figure 4B.

Regarding claim 16, the inlet means are inherently connected to a fluid filled container.

Regarding claim 17, as seen in Figure 4B the main water supply line is integral with the polymeric layers.

Regarding claim 20, Figure 4C shows the distribution header integrally comprising the flow restricting means.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3752

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 2, 3, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,047,995 to Leal-Diaz as applied to claim 1 above, and further in view of German Patent DE 4408556 to Dinur et al.

Diaz discloses all of the limitations set forth in the claims except that the polymeric material layers have a perforation in which the plant extends therethrough. Dinur discloses an irrigation mat with perforations for the plants to extend therethrough (Fig. 1, reference #18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the irrigation device of Diaz with the perforations of Dinur in order to suppress weed growth around the plant.

7. Claims 2-5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,047,995 to Leal-Diaz as applied to claim 1 above, and further in view of U.S. Patent No. 5,058,317 to McMurtrey.

Regarding claims 2-5, Diaz discloses all of the limitations of the claims except for an adjustable opening in which a plant extends, a seam extending from the opening to

an outer edge of the polymeric material layers, and overlapping ends. McMurtrey discloses a plant collar having an adjustable opening (66,64), a seam (22) extending from the opening to an outer edge (Figure 1) and overlapping ends (Figure 8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the irrigation device of Diaz with the adjustable opening, a seam, and overlapping ends as taught by McMurtrey in order to suppress weed growth around the plant and allow for the plant to grow within the irrigation device.

Regarding claim 8, Diaz does not disclose spring means. McMurtrey discloses a cover for a container having spring means (column 7, line 24). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the irrigation device of Diaz with the spring means of McMurtrey in order to secure the irrigation device in the container.

8. Claims 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,047,995 to Leal-Diaz as applied to claim 1 above, and further in view of U.S. Patent No. 6,293,477 to Chambers.

Diaz discloses all of the limitation set forth in the claims except for anchoring means. Chambers discloses a fluid distribution apparatus having anchoring means (90). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the irrigation device of Diaz with the anchoring means of Chambers in order to anchor the irrigation device in the desired position.

Allowable Subject Matter

9. Claims 9, 14, and 19 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 4,065,926 to Brandt discloses a irrigation system with voids for plants. U.S. Patent No. 4,285,472 to Okada et al. discloses a water dripping system formed by laminated layers. .

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Seth Barney whose telephone number is (571)272-4896. The examiner can normally be reached on 7:30am-5:00pm (Mon-Fri).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571)272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Seth Barney
Examiner
Art Unit 3752

SB



David A. Scherbel
Supervisory Patent Examiner
Group 3700